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FILED

2010 JUN 14 PM 3: 33

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY 886 DEPUTY

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 **Scott Thompson**, Individually and
14 on Behalf of All Others Similarly
15 Situated

16 Plaintiffs,

17 v.

18 **CBA - Collection Bureau of**
19 **America**

20 Defendant.

Case Number:

21 **'10 CV 1 268 H**
CLASS ACTION

BGS

22 **Complaint for Damages and**
23 **Injunctive Relief Pursuant To The**
24 **Telephone Consumer Protection**
25 **Act, 47 U.S.C § 227 et seq.**

26 **Jury Trial Demanded**

27 **INTRODUCTION**

- 28 1. **Scott Thompson** ("Plaintiff") brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of **CBA - Collection Bureau of America** ("Defendant"), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's

ORIGINAL

1 cellular telephone, in violation of the Telephone Consumer Protection Act, 47
2 U.S.C. § 227 et seq., ("TCPA"), thereby invading Plaintiff's privacy. Plaintiff
3 alleges as follows upon personal knowledge as to herself and her own acts and
4 experiences, and, as to all other matters, upon information and belief, including
5 investigation conducted by her attorneys.

6 7 JURISDICTION AND VENUE

- 8 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff seeks up to
9 \$1,500 in damages for each call in violation of the TCPA, which, when
10 aggregated among a proposed class number in the tens of thousands, exceeds the
11 \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a
12 national class, which will result in at least one class member belonging to a
13 different state than that of Defendant. Therefore, both elements of diversity
14 jurisdiction under the Class Action Fairness Act of 2005 ("CAFA") are present,
15 and this Court has jurisdiction.
- 16 3. Venue is proper in the United States District Court for the Southern District of
17 California.

18 19 PARTIES

- 20 4. Plaintiff is, and at all times mentioned herein was, an individual citizen and
21 resident of the State of California, and a resident of the County of San Diego.
22 Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47
23 U.S.C. § 153 (10).
- 24 5. Plaintiff is informed and believed, and thereon alleges, that Defendant is, and at
25 all times mentioned herein was, a corporation whose primary corporate address
26 is in Hayward, California. Defendant is, and at all times mentioned herein was, a
27 corporation and a "person," as defined by 47 U.S.C. § 153 (10). Plaintiff is
28

1 informed and believes, and thereon alleges, that at all times relevant Defendant
2 conducted business in the State of California and in the County of San Diego.

4 **FACTUAL ALLEGATIONS**

- 5 6. Plaintiff is informed and believes, and thereon alleges, that on multiple occasions
6 over numerous days, all prior to the date this Complaint was filed, but sometime
7 after four years prior to the Date this Complaint was filed, Defendant contacted
8 Plaintiff's cellular telephone via an "automatic telephone dialing system," as
9 defined by 47 U.S.C. § 227 (a)(1).
- 10 7. Plaintiff is informed and believes, and thereon alleges, that during these
11 telephone calls Defendant used "an artificial or prerecorded voice" as prohibited
12 by 47 U.S.C. § 227 (b)(1)(A).
- 13 8. The telephone number Defendant called was assigned to a cellular telephone
14 service for which Plaintiff incurs a charge for incoming calls pursuant to 47
15 U.S.C. § 227 (b)(1).
- 16 9. These telephone calls constituted calls that were not for emergency purposes as
17 defined by 47 U.S.C. § 227 (b)(1)(A)(i).
- 18 10. Plaintiff did not provide express consent to receive calls on Plaintiff's cellular
19 telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).
- 20 11. Plaintiff did not provide "prior express consent" to Defendant to place telephone
21 calls to Plaintiff's cellular phone with an artificial or prerecorded voice as
22 proscribed under 47 U.S.C. § 227(b)(1)(A).
- 23 12. These telephone calls by Defendant were in violation of 47 U.S.C. § 227(b)(1).

25 **CLASS ACTION ALLEGATIONS**

- 26 13. Plaintiff brings this action on behalf of herself and on behalf of and all others
27 similarly situated (the "Class"). The proposed that Plaintiff seeks to represent
28 are defined as follows:

- 1 a. All persons within the United States who received any telephone call
2 from Defendant to said person's cellular telephone made through the
3 use of any automatic telephone dialing system or an artificial or
4 prerecorded voice, within the four years prior to the filing of this
5 Complaint ("The Class").
- 6 14. Plaintiff represents, and is a member of, The Class, because Plaintiff received
7 telephone calls from Defendant to Plaintiff's cellular telephone using a
8 prerecorded voice.
- 9 15. Defendant, its employees and agents are excluded from The Class. Plaintiff does
10 not know the number of members in The Class, but believes The Class' members
11 number in the tens of thousands, if not more. Thus, this matter should be
12 certified as a Class Action to assist in the expeditious litigation of this matter.
- 13 16. Plaintiff and members of The Class were harmed by the acts of Defendant in at
14 least the following ways: Defendant illegally contacted Plaintiff and The Class
15 members by way of their cellular telephones thereby causing Plaintiff and The
16 Class members to incur certain cellular telephone charges or reduce cellular
17 telephone time for which Plaintiff and The Class members previously paid, by
18 having to retrieve or administer messages left by Defendant during those illegal
19 calls, and by invading the privacy of said Plaintiff and The Class members.
20 Plaintiff and The Class were damaged thereby.
- 21 17. This suit seeks only damages and injunctive relief for recovery of economic
22 injury on behalf of The Class and it expressly is not intended to request any
23 recovery for personal injury and claims related thereto. Plaintiff reserves the
24 right to expand The Class definitions to seek recovery on behalf of additional
25 persons as warranted as facts are learned in further investigation and discovery.
- 26 18. The joinder of The Class members is impractical and the disposition of their
27 claims in the Class action will provide substantial benefits both to the parties and
28 to the court. The Class can be identified through Defendant's records.

- 1 19. There is a well-defined community of interest in the questions of law and fact
2 involved affecting the parties to be represented. The questions of law and fact to
3 The Class predominate over questions which may affect individual Class
4 members, including, but not limited to, the following:
- 5 a. Whether, within the four years prior to the filing of this Complaint,
6 Defendant made any call (other than a call made for emergency
7 purposes or made with the prior express consent of the called
8 party) to a Class member using any automatic telephone dialing
9 system or an artificial or prerecorded voice to any telephone
10 number assigned to a cellular telephone service.
 - 11 c. Whether Plaintiff and The Class were damaged thereby, and the
12 extent of damages for such violation; and
 - 13 d. Whether Defendant should be enjoined from engaging in such
14 conduct in the future.
- 15 20. As a person that received numerous calls using an automatic telephone dialing
16 system or an artificial or prerecorded voice, without Plaintiff's express prior
17 consent, Plaintiff is asserting claims that are typical of The Class. Plaintiff will
18 fairly and adequately represent and protect the interests of The Class in that
19 Plaintiff has no interests antagonistic to any member of The Class.
- 20 21. Plaintiff and the members of The Class have all suffered irreparable harm as a
21 result of the Defendant's unlawful and wrongful conduct. Absent a class action,
22 The Class will continue to face the potential for irreparable harm. In addition,
23 these violations of law will be allowed to proceed without remedy and
24 Defendant will likely continue such illegal conduct. Because of the size of the
25 individual Class member's claims, few, if any, The Class' members could afford
26 to seek legal redress for the wrongs complained of herein.
- 27
28

1 22. Plaintiff has retained counsel experienced in handling class action claims and
2 claims involving consumer actions and violations of the Telephone Consumer
3 Protection Act.

4 23. A class action is a superior method for the fair and efficient adjudication of this
5 controversy. Class-wide damages are essential to induce Defendant to comply
6 with federal and California law. The interest of Class members in individually
7 controlling the prosecution of separate claims against Defendant is small because
8 the maximum statutory damages in an individual action for violation of privacy
9 are minimal. Management of these claims is likely to present significantly fewer
10 difficulties than those presented in many class claims.

11 24. Defendant has acted on grounds generally applicable to The Class, thereby
12 making appropriate final injunctive relief and corresponding declaratory relief
13 with respect to the Class as a whole.

14
15 **FIRST CAUSE OF ACTION**
16 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
17 **47 U.S.C. § 227 *ET SEQ.***

18 25. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
19 as though fully stated herein.

20 26. The foregoing acts and omissions of Defendant constitute numerous and
21 multiple negligent violations of the TCPA, including but not limited to each and
22 every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

23 27. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*,
24 Plaintiff and The Class are entitled to an award of \$500.00 in statutory damages,
25 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

26 28. Plaintiff and the The Class are also entitled to and seek injunctive relief
27 prohibiting such conduct in the future.
28

SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 *ET SEQ.*

29. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

30. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

31. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and each of the The Class are entitled to treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

32. Plaintiff and the The Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class members the following relief against Defendant:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 *ET SEQ.*

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION
OF THE TCPA, 47 U.S.C. § 227 *ET SEQ.***

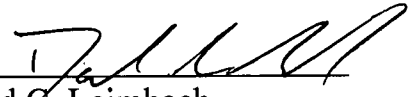
- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Date: June 10, 2010

HYDE & SWIGART

By: 
David C. Leimbach
Attorneys for Plaintiff

HYDE & SWIGART
San Diego, California

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Scott Thompson, Individually and on Behalf of All Others
Similarly Situated

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108
619 233 7770

DEFENDANTS

CBA - Collection Bureau of America

County of Residence of First Listed Defendant Haywood
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

10 CV 1268 H

BY

BGS

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. § 227 et seq

Brief description of cause:

TCPA

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

June 11, 2010

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

ORIGINAL

RECEIPT # 14587

AMOUNT

\$350-

APPLYING IFP

JUDGE

MAG. JUDGE

CP

6/14/10 BM

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS014587
Cashier ID: bhartman
Transaction Date: 06/14/2010
Payer Name: HYDE AND SWIGART

CIVIL FILING FEE
For: THOMPSON V CBA
Case/Party: D-CAS-3-10-CV-001268-001
Amount: \$350.00

CHECK
Check/Money Order Num: 3915
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.